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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,797	11/12/2003	Thomas W. Droog	DROOG ET AL -1 PCT	8045
	7590	05/28/2004	DIV	
Collard & Roe, P.C. 1077 Northern Boulevard Roslyn, NY 11576			EXAMINER HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 05/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/706,797	Applicant(s) DROOG ET AL.	
	Examiner Louis K. Huynh	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-60 is/are pending in the application.
4a) Of the above claim(s) 16-28 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 29-60 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 12 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/890,083.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11/12/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group II, claims 29-60, in the Response to Restriction Requirement filed 05/03/2004 is acknowledged. The traversal is on the ground(s) that the present invention is directed to a single inventive concept, namely, bag filling apparatus and method. This is not found persuasive because Groups I (claims 16-28) and I (claims 29-60) do not relate to a single general inventive concept under PCT Rule 13.1 for lacking the same or corresponding special technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

As a result, claims 16-28 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

Interference

2. Claims 29-60 of this application have been copied from U.S. Patent No. 6,550,226 for the purpose of an interference. However, Applicant has failed to specifically apply each limitation or element of each of the copied claim(s) to the disclosure of the application. See 37 CFR 1.607.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 29-60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not

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described in the instant specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant specification and drawings do not disclose and/or teach:

- Removing the bag from the bag holder with a funnel assembly (claims 29, 40 & 52);
- Opening the bag with the funnel assembly (claims 29, 40 & 55);
- Placing the funnel assembly in the opening of the bag and tilting the funnel assembly away from the bag holder to remove the bag from the bag holder (claims 30 & 41);
- Providing the bag with gussets and opening the gussets when the fluid is blown into the bag (claims 34 & 45);
- Providing a pair of finger assemblies and moving the assembly up, over, and down over the top edges of the bag (claims 35 & 48);
- Moving the bag toward the sealing apparatus while the finger assemblies are moving away from each other (claims 37, 50 & 60);
- Providing a fluid line connected to at least one of the finger assemblies (claim 38);
- Opening the bag with the funnel assembly before removing the bag from the bag holder with a funnel assembly (claims 39 & 47);
- Grasping the opposed top edges of the bag with a pair of grabber arms (claim 48);
- Pulling the grasped top edges of the bag apart (claim 48);

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- Moving the finger assemblies away from each other to close the opening of the bag (claims 49 & 59);
- Pulling the grasped edges of the bag apart while delivering the bag to a sealing apparatus (claim 51);
- Placing the funnel assembly in the opening of the bag and moving the funnel assembly away from the bag holder to remove the bag from the bag holder (claim 53);
- Titrting the funnel assembly away from the bag holder (claim 54);
- Moving the first and second halves (of the funnel assembly) apart from each other to open the bag with the funnel assembly (claim 56);
- Grasping the opposed top edges of the bag with a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag (claim 58).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 29-60 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Gates et al. (US 6,550,226).

Because claims 29-60 contains subject matter which was not supported by the instant and the originally filed specification of the parent Application No. 09/890,083, they form new matter

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and thus are not entitled to the filing date of the parent Application No. 09/890,083 or PCT/CA00/00114 or Canada 2,262,276.

Claims 29-60 are exact copies of claims 1-32 of U.S. Patent No. 6,550,226 to Gates et al.; they are, therefore, clearly anticipated by of U.S. Patent No. 6,550,226 to Gates et al. which has an effective filing date of October 27, 1999 and a publication date of April 22, 2003.

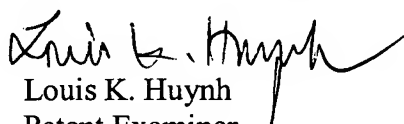
Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure has been cited on form PTO-892 along with the applied prior art.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Louis K. Huynh
Patent Examiner
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May 24, 2004